

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WEST VIRGINIA CELLULAR)	
TELEPHONE COMPANY FOR ISSUANCE OF A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	
NECESSITY TO PROVIDE DOMESTIC PUBLIC)	
CELLULAR RADIO TELECOMMUNICATIONS)	
SERVICE TO THE PUBLIC IN THE KENTUCKY)	CASE NO. 89-020
PORTION OF THE HUNTINGTON-ASHLAND)	
WV/KY/OH METROPOLITAN STATISTICAL AREA,)	
FOR APPROVAL OF FINANCING, AND FOR)	
ESTABLISHMENT OF INITIAL RATES)	

BACKGROUND

On January 26, 1989, West Virginia Cellular Telephone Company ("WVC") filed an application with the Commission for a Certificate of Public Convenience and Necessity, approval of financing, and establishment of initial rates. In addition, WVC petitioned the Commission pursuant to 807 KAR 5:001, Section 7, for confidential treatment of certain documents submitted in support of its application. Subsequently, on March 6, 1989, the company filed a supplement and amendment to the application. Three data requests were issued, as well as a deficiency letter, and replies were received from WVC. Letters of notification were also sent to the planning commissions which might have jurisdiction in the areas where WVC proposed to construct their cellular system.

By Order dated March 17, 1989, the Commission found that the statutory review period of 60 days should commence from the date

of the filing of the amended and supplemental application which was March 6, 1989. On April 28, 1989, a second supplement and amendment was filed in which West Virginia Cellular Telephone Corporation ("WVC Corp."), d/b/a Cellular One of the Tri-State, succeeded to all of the interests of WVC, including WVC's interest in this application as a result of a corporate merger.

DISCUSSION

WVC was a North Carolina general partnership with offices in Greensboro, North Carolina. The partners were Finch Communications, Inc., which owned 51 percent of WVC, and Vanguard Cellular System, Inc. ("Vanguard"), which owned 49 percent of WVC. All of the shares of Finch are owned by Vanguard and one of its wholly-owned subsidiaries. Vanguard is a company which specializes in the construction and operation of cellular systems. It is the sixth largest¹ cellular telephone company owner in the country. Vanguard is publicly owned and traded.

On August 2, 1988, WVC obtained the right to construct and operate a non-wireline cellular system in the Huntington Metropolitan Statistical Area ("Huntington MSA") from the Federal Communications Commission ("FCC"). The rights were originally granted to Huntington Cellular Telephone Company and subsequently transferred to WVC. On November 6, 1987, the West Virginia Public Service Commission ("West Virginia PSC") approved a petition by Huntington Cellular Telephone Company to provide cellular service to the public in the Huntington, West Virginia, portion of the

¹ Application dated January 26, 1989, page 5.

Huntington MSA. The subsequent transfer of the system to WVC did not require the West Virginia PSC's approval. WVC constructed a cell site in Huntington and since February 2, 1988 has provided cellular service to the public in West Virginia. The Huntington MSA also receives cellular service from a wireline system operated by Independent Cellular Network Inc.

WVC Corp. proposes to construct two cellular radio telecommunications towers in Kentucky, one near Catlettsburg in Boyd County ("Tarpin Ridge cell site"), the other near Grayson in Carter County ("Grayson cell site"). The proposed Tarpin Ridge cell site is located 2.6 miles west of the intersection of Interstate 64 and Highway 23, near U.S. 60. There are not inhabited structures within 500 feet of the proposed cell site. The nearest structure is a mobile home located 525 feet away. The height of the antenna tip above ground level is to be 192.5 feet. The proposed Grayson cell site is located 0.6 miles west-northwest of the intersection of Interstate 64 and Highway 7. The nearest public road to the cell site is Interstate 64. There are no inhabited structures located within a radius of 600 feet. The closest existing structure to the cell site is a frame house located 1,000 feet away. The height of the antenna tip above ground level is to be 312.5 feet.

Pursuant to KRS 100.324(1), the proposed cell sites' constructions are exempt from local zoning ordinances. To confirm the matter, WVC contacted the judge executives of Boyd and Carter counties. The responses from the judges confirmed that no local approvals would be required for the construction of the towers.

On March 7, 1989, the Commission notified the Catlettsburg, Grayson, and Ashland planning commissions of the proposed tower construction. The city of Ashland and its planning commission filed their responses on March 21, 1989 expressing no comments, because the proposed sites were outside their jurisdiction. However, they expressed that "locational and design considerations do appear to meet and/or exceed accepted criteria, and would meet our standards if these areas were to ever been [sic] within our jurisdiction." The Catlettsburg and Grayson planning commissions did not file any responses or comments.

The financing for which WVC Corp is seeking approval consists of advances from its parent Vanguard. In March 1988, Vanguard completed a \$53.8 million offering of public stock and in June 1988 put in place a \$325 million revolving line of credit with a group of banks led by The Bank of New York. WVC Corp will be a guarantor of this line of credit. The financing for Vanguard and its subsidiaries is obtained at the parent level. As a result, Vanguard is able to obtain financing from the national banking community at rates and conditions more favorable than those available to much smaller companies.² As a condition of this financing, lenders require guarantees of the line of credit by all subsidiaries. This financing method is common to the cellular telephone industry and is frequently used by holding companies.

² Response to Commission Request, dated March 31, 1989, page 3.

On March 6, 1989, WVC Corp. filed a request for a deviation from the Commission's regulations applicable to financing applications. As grounds for its request, WVC Corp. states that certain financial exhibits that must accompany financing applications are not available or appropriate to a utility whose rates need not be cost based. Based on a review of the financial information provided, the Commission finds that there is substantial compliance with all filing requirements. Consequently, WVC Corp.'s request for a deviation is moot.

WVC Corp. seeks confidential treatment of certain financial documents submitted in support of its application. These documents include a balance sheet, estimates of construction costs, and pro forma financial information. WVC Corp. supports its petition for confidentiality by stating that the information in the exhibits has been considered by WVC Corp. to be confidential, has not been released to the public, and is not known outside the business of WVC Corp. The information was developed by expending substantial sums of money and could not easily be acquired or duplicated by others. Publication of the information could be of substantial value to competitors and could result in substantial competitive injury to WVC Corp.

The Commission is of the opinion that in balancing WVC Corp.'s private competitive interest against the public interest in disclosure, the estimates of construction costs and pro forma financial information should be treated as confidential. However, the balance sheet is already a public record due to its inclusion in an application to the FCC for assignment of a cellular license.

Since the balance sheet is publicly available at a federal agency, there is no valid reason to treat it as confidential at this Commission.

With regard to the establishment of initial rates, WVC Corp. received approval of its proposed tariff from the West Virginia PSC on March 21, 1989. The application requests the Commission to accord full faith and credit to the West Virginia PSC's finding of reasonableness. In past cases³ the Commission has recognized the need for rate uniformity where possible for cellular utilities providing service in MSA's including parts of more than one state. Therefore, the Commission finds the need for rate uniformity to be paramount and the rates found reasonable by the West Virginia PSC will be accepted in Kentucky. However, WVC Corp. must comply with KRS 278.160 by filing a tariff consistent with the proposed tariff. The tariff and future changes should be filed in compliance with the requirements of 807 KRS 5:011.

Having reviewed all the exhibits and evidence submitted by WVC Corp., the Commission finds that WVC Corp. has the financial, managerial, and technical abilities to operate a cellular telephone system and to provide reasonable service to the public.

FINDINGS

1. WVC Corp. possesses the financial, managerial, and technical abilities to provide reasonable service.

³ Case No. 10173, Independent Cellular Network, Inc., Order dated May 24, 1988, page 3.

2. WVC Corp.'s proposed tariff is reasonable and should be accepted.

3. The confidential treatment of the financial exhibits should be granted in part and denied in part.

IT IS THEREFORE ORDERED that:

1. WVC Corp. be and it hereby is authorized to construct the cellular facilities described in its application and to provide cellular radio service in the Kentucky portion of the Huntington MSA.


2. WVC Corp.'s proposed tariff be and it hereby is accepted.

3. Confidential treatment shall be granted as to WVC Corp.'s estimates of construction costs and pro forma financial information, but shall be denied as to the balance sheet.


4. Within 30 days of the date of this Order, WVC Corp. shall file its tariff.

Done at Frankfort, Kentucky, this 18th day of May, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director